

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHARLOTTE BENNETT, : Case No.: 22-cv-7846  
Plaintiff, :  
v. :  
ANDREW M. CUOMO, et al., : New York, New York  
Defendants. : March 22, 2024  
-----:

TRANSCRIPT OF STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE SARAH L. CAVE  
UNITED STATES MAGISTRATE JUDGE

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1 THE COURT: Good morning. This is  
2 Magistrate Judge Cave. We're here for a conference  
3 in Bennett versus Cuomo; Case Number: 22-cv-7846.

4 May I have the appearances, starting with  
5 the plaintiff, Ms. Bennett.

6 MS. SCHNELL: Good morning, Your Honor.  
7 Laura Schnell and Herbert Eisenberg at Eisenberg &  
8 Schnell for Ms. Bennett.

9 THE COURT: Good morning.

10 MR. EISENBERG: Good morning.

11 MS. GREEN: And, Your Honor, Rachel Green  
12 and Debra Katz at Katz Banks Kumin for the  
13 plaintiff, Ms. Bennett.

14 THE COURT: All right. Good morning.

15 For Mr. Cuomo?

16 MS. GLAVIN: Yes. Good morning,  
17 Your Honor. Rita Glavin, Glavin PLLC, for former  
18 Governor Cuomo. And I believe there are some  
19 colleagues from Sher Tremonte on the call that can  
20 introduce themselves, also for the former governor.

21 THE COURT: All right. Thank you.

22 MS. TRZASKOMA: Good morning.

23 Good morning, Your Honor. Theresa  
24 Trzaskoma from Sher Tremonte also on behalf of  
25 former Governor Cuomo.

1 THE COURT: Good morning.

2 Anyone else for Mr. Cuomo?

3 MS. NOONAN: Good morning, Your Honor.

4 Allegra Noonan for Governor Cuomo. Thank you.

5 THE COURT: All right. Good morning.

6 For Ms. DeRosa?

7 MR. MORVILLO: Good morning, Your Honor.

8 Gregory Morvillo on behalf of Ms. DeRosa, and I'm

9 joined by Sarah Sulkowski and Anthony Gruppuso.

10 THE COURT: All right. Good morning.

11 For Ms. DesRosiers?

12 MR. HAMID: Good morning, Your Honor. Joe

13 Hamid at Debevoise & Plimpton. I believe my

14 colleague, Leah Rosenberg at Debevoise is also on

15 the line for Ms. DesRosiers.

16 THE COURT: Very good. Good morning.

17 For Ms. Mogul?

18 MR. DELIKAT: Good morning, Your Honor.

19 Mike Delikat for defendant, Mogul. I believe my

20 colleague, Brianna Messina is also on the line.

21 THE COURT: Good morning.

22 For Ms. Cuomo, Madeline Cuomo?

23 MR. PIKUS: Good morning, Your Honor.

24 David Pikus, P-I-K-U-S, of Bressler, Amery & Ross,

25 PC.

1 THE COURT: Thank you. Good morning.  
2 For Ms. Boylan?

3 MS. GERCHIK: Good morning, Your Honor.  
4 Julie Gerchik of Glaser Weil, on behalf of  
5 non-party, Ms. Boylan, and I have my colleague, Alex  
6 Miller with me.

7 THE COURT: Sure. Thank you.  
8 Anyone else who is appearing that would  
9 like to make themselves known?

10 MS. LONGLEY: Good morning, Your Honor.  
11 This is Serena -- Hi, it's Serena Longley from the  
12 New York Attorney General's Office. I don't have  
13 anything I plan to bring up, but as you encouraged,  
14 we are here in case you need us.

15 THE COURT: Okay. Thank you so much for  
16 being here. I hope that's the case.

17 All right. Anyone else?

18 MS OEHLKE: And this is Chris Oehlke of  
19 Perry Law, on behalf of non-party, Lindsey Boylan as  
20 well.

21 THE COURT: All right. Thank you.

22 All right. So the way that I would like to  
23 proceed today is to address the issues first  
24 involving the two nonparties, Ms. Boylan and  
25 Ms. Cuomo, in the hope that we may be able to

1 resolve those first, and then they can be excused  
2 from the conference.

3 Ms. Longley, I don't have anything that the  
4 parties have raised in their letters about the OAG.  
5 You're welcome to stay on if you like just in case,  
6 but, hopefully, given that there was nothing raised  
7 in the letters, that we don't have anything to  
8 address to the OAG today.

9 So starting with Ms. Boylan, it looked like  
10 from the parties' letters that Ms. Boylan's  
11 production was going to be beginning earlier this  
12 week on a rolling basis.

13 So, Ms. Gerchik, would you or one of your  
14 colleagues be able to give me an update on where  
15 things stand?

16 MS. GERCHIK: Of course, Your Honor. This  
17 is Ms. Gerchik.

18 So we did begin on a rolling basis. We  
19 produced some documents on Wednesday. We have gone  
20 through a large chunk of the documents so far, but  
21 we've gone through them a little more quickly than  
22 we expect to be going through them as we go forward,  
23 unfortunately, but only because, honestly, we've,  
24 you know, been able to go through most of the spam  
25 and junk mail first. And it's been, you know, quite

1 a quick review. But we did do our initial  
2 production. We produced on Wednesday. And we're  
3 going to continue on an on-going basis.

4 THE COURT: Okay. All right.

5 Any anticipation as to how many more  
6 productions there might be or when you might be  
7 finished?

8 MS. GERCHIK: It's a little hard to say.  
9 It's a little hard to say right now. I mean, where  
10 we -- just so Your Honor knows, where we ended up  
11 was that we agreed -- really just because we thought  
12 it was more efficient than having to go through  
13 motion practice. So we basically agreed to review  
14 somewhere in the neighborhood of about 45,000  
15 documents.

16 THE COURT: Okay.

17 MS. GERCHIK: Which is quite a lot,  
18 particularly for a non-party.

19 THE COURT: All right. Thank you. I  
20 appreciate that.

21 Ms. Glavin, you or anybody from your team,  
22 is there anything you'd like to raise about  
23 Ms. Boylan's production thus far?

24 MS. GLAVIN: No, Your Honor, not at this  
25 time. We received the documents, or the initial

1       tranche on Wednesday, and we really have not had a  
2       chance to get through those just based on some other  
3       document productions this week.

4               THE COURT:   Okay.

5               MS. GLAVIN:   So we'll just be in touch with  
6       Ms. Boylan's counsel.

7               THE COURT:   All right.   Good.   All right.  
8       I appreciate you working together.   So sounds like  
9       that process is well underway.

10              Ms. Schnell or Ms. Green, anything you want  
11       to raise as to Ms. Boylan while we have her counsel  
12       on the line?

13              MS. SCHNELL:   No, Your Honor.

14              THE COURT:   Anything anybody else would  
15       like to raise as to Ms. Boylan?

16              Good.   Okay.

17              Well, Ms. Gerchik, thank you to you and  
18       your colleagues for being here today.   You're  
19       welcome to stay if you like, but I think the only  
20       other thing we'll be doing at the conclusion of this  
21       conference is just setting a date for our next  
22       status conference.   So you're welcome to stay if you  
23       want to be heard on the timing of that, otherwise,  
24       we'll just issue an order that includes a date for  
25       our next status conference, which would cover all



1 the issues that we're talking about today, as well  
2 as anything having to do with Ms. Boylan. But it  
3 doesn't sound like there's any ripe issues, at the  
4 moment, at least.

5 MS. GERCHIK: All right. Thank you,  
6 Your Honor.

7 THE COURT: All right.

8 MS. GERCHIK: Thank you.

9 THE COURT: Very good. Thank you.

10 Okay. So next I'd like to turn to  
11 Ms. Bennett's letter concerning the deposition  
12 subpoena to Ms. Cuomo.

13 And so it looks like, you know, there may  
14 be some potential points of agreement, but let me --  
15 since the issue was first raised by Ms. Bennett,  
16 I'll give Ms. Bennett's counsel the floor first, and  
17 then I'll hear from Ms. Cuomo's counsel.

18 MS. SCHNELL: Good morning again,  
19 Your Honor. This is Laura Schnell.

20 I don't know that there's agreement. I  
21 mean, we certainly want to take Ms. Cuomo's  
22 deposition. We've agreed that the deposition would  
23 not happen until after the other defendants'  
24 depositions have taken place. But we do want to get  
25 a date in place now so that we can meet the

1 discovery deadline.

2 THE COURT: Sure. Okay.

3 Mr. Pikus, are you still objecting  
4 altogether to the deposition subpoena to your  
5 client?

6 MR. PIKUS: We are, Your Honor. And if I  
7 may, if it please the Court, I'd just like to  
8 explain why we're concerned about this.

9 You know, it's easy to say, well, what's  
10 wrong with sitting for an hour or two and giving  
11 testimony? Our concern plainly and simply is that  
12 we've demonstrated to the plaintiff already that  
13 there's no nexus between Governor Cuomo and his  
14 sister in terms of any instructions. And our  
15 concern here is that the plaintiff has an ulterior  
16 motive. And that's reinforced by the fact that this  
17 *New York Times* article on which they rely was a bit  
18 of bootstrapping because we think that if they  
19 didn't instigate it directly, they certainly were  
20 big promoters of the content of that article, some  
21 of which is either untrue or misleading.

22 And the attorneys for the plaintiff have  
23 appeared on CNN, as well as giving interviews to *The*  
24 *New York Times* denouncing my client publicly. She's  
25 not a state employee. She's never been an employee

1 of her brother, you know. She's his sister and  
2 that's the connection. And we don't, frankly, want  
3 to give them an opportunity to cause harassment or  
4 embarrassment of the governor's family. You know,  
5 he can speak for himself.

6 The other points we make are that, number  
7 one, this is really a sideshow. Whatever Ms. Cuomo  
8 may or may not have done is really not material to  
9 the overall case here. The stay of discovery was --  
10 excuse me -- the denial of the motion to stay  
11 discovery came on dueling applications by the  
12 parties and really didn't address a very peripheral  
13 non-party. So we continue to submit that the  
14 deposition should at least be stayed until there's a  
15 ruling on the retaliation claims.

16 And we also think that our conditions for  
17 the deposition, if it's allowed to go forward, are  
18 reasonable. I know that the plaintiff -- and we  
19 thank them -- they've agreed at least to limit the  
20 time period in accordance with the Court's prior  
21 order.

22 But the one thing I really want to  
23 emphasize is that the argument here that the  
24 plaintiff makes is a little crafty. Nothing in  
25 these quotes that they make from these few text

1 messages that they provide, such as, you know, he  
2 appreciates -- meaning the governor -- the governor  
3 appreciates what you did or that he's seen what they  
4 did -- those are not instructions.

5           You know, saying that a political figure  
6 appreciates something that his supporters did is  
7 hardly proof of the reason that they're arguing that  
8 they need Ms. Cuomo's deposition. They're claiming  
9 that she acted at the behest and was an agent of her  
10 brother, and none of these quotes that they've given  
11 Your Honor support that. You know, at best, he was  
12 aware of what she was doing, and that doesn't  
13 outweigh the embarrassment, the time, the cost.

14           This has been very costly to my client.  
15 She had to make a motion in which she was  
16 substantially successful. She now has to argue this  
17 motion as well. She'll probably want representation  
18 at the deposition. This is just a staggering cost  
19 for a non-party, especially under the circumstances.

20           That's what we have to say.

21           THE COURT: Okay. Well, as I read the text  
22 messages though, Mr. Pikus, with all due respect,  
23 she does seem to have knowledge and have taken some  
24 actions that are arguably relevant to Ms. Bennett's  
25 claims in this case, as well as to Mr. Cuomo's

1 defenses.

2           So I think it is fair to say that based on  
3 the record that we have as of today, that your  
4 client does have some knowledge that is relevant,  
5 like I said, both to the claims and defenses. And,  
6 on that basis, that a deposition, albeit, you know,  
7 very limited, both in time period as well as the  
8 duration of her deposition are warranted. It seems  
9 like there's agreement that it would not be held  
10 until after party depositions in this case.

11           But I believe, and my ruling is that, Ms.  
12 Cuomo, based on the record as of today, should be  
13 deposed, should sit for her deposition pursuant to  
14 the subpoena that she's received. Like I said, I'm  
15 willing to limit it as to both time period, scope,  
16 as well as duration, but I think we should get a  
17 date for it on the calendar.

18           Obviously, if there's something that  
19 arises -- you know, I'm not going to stay it until  
20 we have a ruling from Judge Broderick on the  
21 retaliation claim. But in between now and the date  
22 that the deposition is scheduled for, if there's a  
23 ruling from Judge Broderick that you think changes  
24 that analysis, the analysis that I just described,  
25 then you're welcome to renew your request. But

1 given how much we have to get done in this case, I'm  
2 trying to avoid deferring too many issues until  
3 later on in the case. So I would like to get a date  
4 on the calendar for your client's deposition.

5 And my proposal is consistent with the  
6 plaintiff's letter, that we limit the time period,  
7 the scope of the deposition to February 27, 2021  
8 through September 14, 2022, and that the deposition  
9 be no longer than two hours of on-the-record time.

10 Can you work with Ms. Cuomo to get some  
11 dates from her later in our discovery period? Our  
12 fact discovery cutoff is in August, so presumably it  
13 would be sometime a little bit down the road, after  
14 the party depositions have taken place, but to get  
15 some dates from her that you can share with the  
16 parties to the case so that we can get her on the  
17 calendar?

18 MR. PIKUS: Certainly, Your Honor.

19 THE COURT: Okay. Wonderful. Thank you.

20 MR. PIKUS: Thank you.

21 THE COURT: All right. So just to clarify,  
22 her deposition will be limited to two hours, the  
23 time period limited as I just stated, and to take  
24 place after the party depositions.

25 MR. PIKUS: May I just inquire, Your Honor?

1 I'm sorry, but being a non-party, I have less  
2 knowledge than the others about the schedule.

3 THE COURT: Certainly.

4 MR. PIKUS: The plaintiff's attorneys had  
5 said something about the deposition deadline being  
6 June 30th, and Your Honor had mentioned August.

7 THE COURT: Right. So -- yes.

8 MR. PIKUS: Could I impose on Your Honor to  
9 clarify that for us, please.

10 THE COURT: Yes, I'll clarify that.

11 The deposition deadline is June 30th, and  
12 our fact discovery cutoff altogether is August 15th.

13 MR. PIKUS: So would you say that the  
14 cutoff for Ms. Cuomo's deposition would be June 30th  
15 then or would it be August?

16 THE COURT: I think the goal would be to  
17 finish it by then. But, as I said, we are keyed to  
18 finishing the party depositions first before her  
19 deposition. So given that she is a non-party and we  
20 have a lot to get through, I will certainly be  
21 flexible, if we're not able to accommodate all the  
22 caveats that we've said about scheduling her  
23 deposition. If it doesn't occur before June 30th,  
24 I'll be reasonable about that.

25 MR. PIKUS: Okay. That's fair.

1 THE COURT: But let's aim for getting a  
2 date for the end of June with her, and then if it  
3 needs to slide because, you know, there's another  
4 party deposition that's important to take place  
5 before hers, then we can reassess, all right?

6 MR. PIKUS: Thank you so much, Your Honor.

7 THE COURT: Okay. All right.

8 MR. PIKUS: Are we excused at this point?

9 THE COURT: Before I let you go --

10 Ms. Schnell, anything else as to Ms. Cuomo  
11 before we let Mr. Pikus go?

12 MS. SCHNELL: No, Your Honor, although I  
13 certainly don't see any reason why this shouldn't  
14 happen before June 30th, especially if it's a  
15 two-hour deposition.

16 And with respect to the two hours,  
17 Your Honor, if we reach two hours and there is a  
18 very discrete -- things we have not gotten to  
19 question her about, I'm hoping we could come back to  
20 the Court to get a -- you know, some brief  
21 additional time, if necessary.

22 THE COURT: Well, certainly, I would ask  
23 you to be efficient, and then you can ask Mr. Pikus  
24 in the first instance if he's willing to accommodate  
25 that. And if not, then yes.



1 MS. SCHNELL: Thank you, Your Honor.

2 THE COURT: And --

3 MR. PIKUS: Okay. Thank you. Have a good  
4 weekend, everyone.

5 THE COURT: Okay. Thank you very much.

6 MR. PIKUS: Bye now.

7 THE COURT: Okay. All right. Thank you.

8 So then the next issue, I think, that  
9 Ms. Bennett had raised was her request for  
10 production to Mr. Cuomo, numbers 52 and 70.

11 Ms. Schnell, is that an issue that you or  
12 one of your colleagues can address?

13 MS. GREEN: Rachel Green --

14 MR. MORVILLO: Your Honor, this is Greg  
15 Morvillo. I'm sorry. I'm hearing some background  
16 noise. It feels like somebody's outside or on a  
17 boat. Could --

18 THE COURT: A little bit, yes.

19 MR. MORVILLO: If you would be willing to  
20 ask that person to mute their phone, that would be  
21 very helpful.

22 THE COURT: Yes. I can't tell who it is,  
23 but if you're outside and not speaking, if you could  
24 please mute your line for us.

25 Much better. Thank you.

1 Thank you, Mr. Morvillo.

2 Okay. So on Ms. Bennett's team, somebody  
3 who could address RFPs 52 and 70.

4 MS. GREEN: Yes, Your Honor. Good morning.  
5 This is, again, Rachel Green on behalf of  
6 Ms. Bennett.

7 As we wrote in our filing, defendants have  
8 confirmed that they are withholding responsive  
9 documents for these two RFPs, 52 and 70. They  
10 listed nearly a dozen objections to RFP 52 and about  
11 six or so to RFP 70, but they have not made clear  
12 pursuant to which objections they are withholding  
13 responsive documents. So we request that a  
14 defendant be required to specify the objections on  
15 which he is standing, and also set a briefing  
16 schedule so that we can move to compel production  
17 responses to those two requests.

18 THE COURT: Yeah. Not super psyched about  
19 more briefing, so let's try to work this out today.

20 So I'm trying to understand request numbers  
21 52 and 70. So, with respect to request number 52,  
22 it is, "All documents concerning or relating to any  
23 statements made by your attorneys or communications  
24 team that you allege were false or not authorized by  
25 you."

1           So, in the first instance, has Mr. Cuomo  
2           asserted so far in this litigation that his  
3           attorneys or communications team made statements  
4           that he did not authorize?

5           MS. GREEN: Not so far, as far as I'm  
6           aware. Although I'd be happy to be corrected if  
7           Defendant Cuomo has, indeed, made that and we missed  
8           it. But no, not so far.

9           THE COURT: Okay. So what is this request  
10          then trying to go after? If that's not something  
11          that's been asserted, why is it a live issue?

12          MS. GREEN: Well, Your Honor, if he does  
13          later assert it or state that some of his statements  
14          or many of the statements made by his team were  
15          false or not authorized by him, it goes directly to  
16          plaintiff's causes of action 2, 7 and 11, and,  
17          therefore, is relevant to her causes of action.

18          THE COURT: All right.

19          Ms. Glavin, would you or one of your  
20          colleagues like to respond?

21          MS. GLAVIN: Yes. Hi, Judge. It's Rita  
22          Glavin.

23          THE COURT: Thank you.

24          MS. GLAVIN: I actually was surprised by  
25          the letter because I did not think that this was

1 going to be sent to Your Honor on March 15th. We  
2 had a meet and confer about this several weeks  
3 ago --

4 THE COURT: Right.

5 MS. GLAVIN: And I think I had explained on  
6 both -- Request 52 about -- this read more like an  
7 interrogatory. And I said, you know, you're asking  
8 for some type of admission here, and so I just said  
9 the wording of this is just -- is wrong for a  
10 document request.

11 I didn't think it was a proper document  
12 request, how it was worded, because I don't know  
13 that Governor Cuomo has alleged that his attorney  
14 said something that was, you know, false or  
15 unauthorized. And they can certainly question him  
16 about that at his deposition.

17 THE COURT: Yes.

18 MS. GLAVIN: And so we had actually had a  
19 meet and confer with plaintiff's counsel on March  
20 14th in anticipation of having to get status letters  
21 to the Court. And this didn't come up on that call,  
22 so I just, you know, assumed this was not a live  
23 issue. I don't think it should be a live issue, you  
24 know.

25 And with respect to 70, I had also read

1 that document request to be, you know, improper,  
2 and, you know, it was making more of a statement.

3 We certainly are producing what are  
4 responsive documents in Governor Cuomo's possession,  
5 custody and control. And, you know, we're going  
6 back. And to the extent there are things that are  
7 responsive, we, of course, will produce them. But  
8 with respect to these two particular requests, it  
9 just seemed like more of a statement and they were  
10 seeking some type of an admission that, you know,  
11 was more appropriate for a deposition.

12 So I was surprised this got raised. I  
13 don't think that it's ripe. I'm happy to discuss it  
14 further with plaintiff's counsel. I don't think  
15 this is something that needs to have any type of  
16 briefing.

17 THE COURT: And is it correct, my statement  
18 that I made to Ms. Green -- and she seemed to agree  
19 was the case -- you're not changing the position  
20 that to date at least, Mr. Cuomo has not alleged  
21 that any statement made by his attorneys or his  
22 communications team was false or not authorized?

23 MS. GLAVIN: Well, with respect to that,  
24 I'm not aware that he's ever said -- without waiving  
25 any privilege -- and let's be clear about

1       that because they're --

2               THE COURT:   Sure.   Sure.

3               MS. GLAVIN:   They're certainly talking  
4       about -- what they're getting at is communications  
5       Governor Cuomo, you know, may have had with me, and  
6       certainly, it's in the context of an attorney-client  
7       relationship.   So we can't waive privilege on that.

8               But I'm not aware of him coming out, you  
9       know, in any other forum and indicating that I've  
10      said, you know, something false -- because I think  
11      it's directed at me -- or, you know, that his  
12      attorneys aren't his representatives.

13              THE COURT:   Sure.

14              MS. GLAVIN:   But I think it's certainly  
15      grounds, you know, to ask him about in his  
16      deposition to the extent it doesn't trample on  
17      privilege.

18              THE COURT:   Okay.

19              MS. GLAVIN:   And this all then goes to the  
20      retaliation claims, which Your Honor knows is  
21      pending before Judge Broderick.

22              THE COURT:   Right.   Of course.   All right.

23              So, Ms. Green, just sticking with number 52  
24      for a second.   It seems like this is a nonissue at  
25      this point in time.   And it also seems like, based

1 on what Ms. Glavin just said, that Mr. Cuomo will be  
2 prepared at his deposition to answer that question  
3 one way or the other, whether there's any statement  
4 that his attorneys or his communications team made  
5 that he believes were false or unauthorized.

6 So on the representation that we can  
7 address that, you know, you can pose this question  
8 in his deposition, it seems like it's a nonissue at  
9 this point in terms of document requests.

10 MS. GREEN: I understand, Your Honor.

11 If I may just respond very briefly for the  
12 record --

13 THE COURT: Sure.

14 MS. GREEN: -- on several points.

15 THE COURT: Okay.

16 MS. GREEN: Just to be quite clear, the  
17 purpose of this request is because the plaintiff  
18 alleges that Defendant Cuomo, through his agents,  
19 Rita Glavin, including his entire comms team,  
20 deliberately smeared her across numerous occasions.  
21 And so seeking these documents is directly relevant  
22 to those claims.

23 And then as far as Ms. Glavin's point about  
24 whether this is right, as we put in our letter to  
25 the Court, we did meet and confer on February 26th.

1 We did state our objections. She indicated that  
2 they were standing on their objections, and we  
3 informed them we were at an impasse, so we do  
4 believe that we, you know, complied with this  
5 Court's rules on the matter.

6 And then, finally, we did raise requests  
7 for admission on this topic, multiple ones. I cited  
8 a couple in Footnote 2 to Docket 216 requesting  
9 Defendant Cuomo to admit -- you know, I have --  
10 Request for Admission number 111 stated, "Please  
11 admit that Defendant Cuomo was aware of the public  
12 statements his legal representatives made about  
13 plaintiff."

14 Number 112 states, "Please admit that all  
15 public comments made by Rita Glavin on behalf of  
16 Defendant Cuomo about plaintiff were authorized by  
17 Defendant Cuomo."

18 So to the point of whether these are sort  
19 of styled as interrogatories, we did make these  
20 requests for admission. And to be clear, he did not  
21 answer. And, in fact, he objected to both of those  
22 requests for admission and stated that the requests  
23 were premature.

24 THE COURT: Right.

25 MS. GREEN: And so we certainly will be



1 prepared to ask him about this at his deposition.

2 THE COURT: Right.

3 MS. GREEN: But we do maintain that any  
4 responsive documents are certainly relevant to  
5 plaintiff's claims.

6 THE COURT: All right. Well, you can  
7 maintain that position, but I'm not compelling  
8 Mr. Cuomo to respond to RFPs any differently or any  
9 further or make any production as to RFP number 52  
10 at this time.

11 To the extent that there are issues with  
12 requests for admission, we'll address those --  
13 requests for admission should come at the end of  
14 discovery. They're not a discovery device. So to  
15 the extent there are disputes about requests for  
16 admission and the responses to those, we'll cover  
17 that down the road. But at this point, I don't  
18 think that there's anything further that needs to be  
19 done as to RFP number 52.

20 Now, turning to number 70, I'm trying to  
21 understand who the "hes" and the "hers" are in this.

22 So am I interpreting RFP number 70  
23 correctly that Ms. Bennett asserts that Ms. Mogul  
24 made a statement that Mr. Cuomo's actions did not  
25 rise to the level of sexual harassment?

1           But then there's a reference to grooming  
2     "her" when she made "her" complaint. Is the "her"  
3     Ms. Mogul, or is the "her" Ms. Bennett, or is the  
4     "her" somebody else?

5           MS. GREEN: Thank you, Your Honor. I'm  
6     happy to provide clarification on that.

7           THE COURT: Okay. Great.

8           MS. GREEN: "He" refers to Defendant  
9     Cuomo -- was still grooming her. The "her" refers  
10    to plaintiff -- when she, plaintiff, made her,  
11    plaintiff, complaint.

12          THE COURT: Okay. So Ms. Mogul made some  
13    separate statement. And I don't have the complaint  
14    open in front of me, but the premise of this RFP is  
15    that Ms. Mogul made some statement characterizing  
16    Ms. Bennett's complaint, right?

17          MS. GREEN: Yes. As grooming and not  
18    rising to the level of sexual harassment. That's  
19    correct, Your Honor.

20          THE COURT: Okay. And so you're seeking,  
21    for example, any communications between Ms. Mogul  
22    and Mr. Cuomo about that particular statement?

23          MS. GREEN: Yes. Or any relating to that  
24    statement. So they could be communications between  
25    others that Defendant Cuomo has in his possession,

1 custody, or control. But, yes, relating to that,  
2 statement.

3 And, you know, Defendant Cuomo, one of his  
4 objections, many objections to this request includes  
5 construing the term "complaint" to mean  
6 "allegation," and then construing the language used  
7 in the request to avoid anything resembling  
8 acquiescing to plaintiff's allegation about Mogul  
9 having made that.

10 And so, given the narrowing that he  
11 provided in his objection, if he has responses,  
12 documents under those conditions, you know, he  
13 should still be obligated to produce them to  
14 plaintiff.

15 THE COURT: Okay. Ms. Glavin, do you want  
16 to add anything further? You touched on 70 earlier,  
17 but --

18 MS. GLAVIN: Yeah.

19 THE COURT: -- more procedurally, if you  
20 want to respond to what Ms. Green said --

21 MS. GLAVIN: Yeah. Your Honor, one of the  
22 fundamental problems with how this is worded is Judy  
23 Mogul, who was a counsel to the governor in the  
24 Executive Chamber --

25 THE COURT: Right.

1 MS. GLAVIN: She never made this statement  
2 or conclusion. It's not true. You just have to  
3 read her testimony with the OAG. This is plaintiff,  
4 you know, trying to interpret, you know, Ms. Mogul's  
5 notes. But, you know, Ms. Mogul's counsel is on  
6 this call, and they might address it.

7 But the fundamental basis of this is a  
8 characterization of something that they're claiming  
9 Ms. Mogul said, which she didn't say or conclude.  
10 And that was the problem with this document request.  
11 It's just, as we said, vague, ambiguous,  
12 mischaracterizes Ms. Mogul, who was, you know, also  
13 a counsel to the governor.

14 THE COURT: Right. Well, I don't think  
15 I've been subtle about my inability to, sort of,  
16 understand the premise of the RFP, but let me just  
17 ask. And, Mr. Delikat, I do want to hear from  
18 you --

19 MR. DELIKAT: Yes.

20 THE COURT: But let me just ask another  
21 question of Ms. Glavin first, and that is, the  
22 searches and production of Mr. Cuomo's documents  
23 that are being done, do they otherwise include  
24 communications or other documents between him and  
25 Ms. Mogul concerning Ms. Bennett's allegations,

1 complaint -- however you characterize her  
2 assertions?

3 MS. GLAVIN: Your Honor, I think that we  
4 would have produced anything that's nonprivileged,  
5 you know, that's relevant to her allegations.

6 THE COURT: Okay. And is --

7 MS. GLAVIN: I don't know off the top of my  
8 head, but if it were nonprivileged -- because we  
9 went through -- I mean, of course, we went through  
10 this exercise three years ago.

11 THE COURT: Sure. And is there privilege  
12 being asserted over some of the communications  
13 between Ms. Mogul and Mr. Cuomo based on her status  
14 as his counsel at the time?

15 MS. GLAVIN: I think it would have been --

16 MR. DELIKAT: There were none on the topic.

17 MS. GLAVIN: Okay. Yeah, I was going to  
18 say, Mike, you know -- excuse me -- Mr. Delikat  
19 would know better than I would.

20 THE COURT: Okay. Go ahead. Go ahead,  
21 Mr. Delikat. I won't interrupt you --

22 MR. DELIKAT: Thank you, Judge.

23 THE COURT: -- any further.

24 MR. DELIKAT: Yes. Plaintiff's counsel  
25 made the same request to us, and we objected and

1 said because Mogul did not make any such statement,  
2 there are no documents responsive to this request.

3 And so, you know, with respect to this  
4 allegation that Ms. Mogul said this was grooming and  
5 it wasn't sexual harassment, it's been clear, and  
6 from Ms. Mogul's testimony in front of the AG, that  
7 she never brought up the term or used the word  
8 "grooming." In fact, it was Ms. Bennett that  
9 brought that up in the conversation with Ms. Mogul.  
10 So the whole question here is built on a faulty  
11 presumption.

12 We've denied that quite clearly. We just  
13 didn't object to it, but we said there was no such  
14 statement made, and we produced all the documents,  
15 you know, relevant around this, you know, including  
16 Ms. Mogul's notes of a conversation that she had  
17 with Ms. Bennett.

18 THE COURT: Okay. So that was the other  
19 thing I wanted to confirm. It sounds like, based on  
20 what Ms. Glavin said, that to the extent there are  
21 any nonprivileged communications or other documents  
22 between Ms. Mogul and Mr. Cuomo about Ms. Bennett's  
23 allegations, complaint, assertions, that Mr. Cuomo  
24 has produced those.

25 Is it fair to say that Ms. Mogul has done

1 the same?

2 MR. DELIKAT: Yes.

3 THE COURT: Okay. All right.

4 Ms. Green, anything else you want to say on  
5 RFP number 70?

6 MS. GREEN: Thank you, Your Honor.

7 Only that to the extent that Mr. Morvillo,  
8 on behalf of Defendant Mogul, did say that there are  
9 no responsive documents in response to a similar  
10 request, the difference here is only that  
11 Ms. Glavin -- Defendant Cuomo responded saying that  
12 they are withholding responsive documents. And so  
13 if there are responsive documents, we only ask,  
14 based on what objections are they maintaining that  
15 withholding. And if there are no responsive  
16 documents, as, you know, we have not been bringing  
17 the same request to your attention in the case of  
18 Defendant Mogul because if there are no responsive  
19 documents, there are no responsive documents,  
20 there's nothing further that can be done.

21 THE COURT: Okay. Just clarify, it was  
22 Mr. Delikat not Mr. Morvillo, but --

23 MS. GREEN: Oh. So sorry.

24 THE COURT: It's okay. It's okay. It's a  
25 lot of people to keep track of.

1 But, Ms. Glavin, is there anything being  
2 withheld as to number 70?

3 MS. GLAVIN: Judge, no.

4 THE COURT: Okay.

5 MS. GLAVIN: No. No. That was the issue  
6 with -- I -- you know, I probably should have taken  
7 advice from Mr. Delikat to say Ms. Mogul didn't say  
8 that.

9 THE COURT: Okay.

10 MS. GLAVIN: That should have been the  
11 response.

12 THE COURT: All right.

13 MS. GLAVIN: It could have saved us all  
14 this trouble.

15 THE COURT: All right. So at this time I'm  
16 not going to require any further production by Mr.  
17 Cuomo in response to RFP number 70. This is all  
18 obviously subject to questioning at depositions.  
19 And then I have no doubt that the parties will have  
20 numerous post-deposition follow-up requests.

21 So if this remains an issue, it can be  
22 raised again. But as of today, the record does not  
23 support requiring further action with respect to RFP  
24 number 70. Okay.

25 Anything else on Ms. Bennett's side of



1 things with respect to any of the defendants'  
2 productions or other issues before I turn to the  
3 issues that have been raised as to Ms. Bennett?

4 MS. GREEN: Not at this time, Your Honor.

5 THE COURT: Okay. Wonderful. Thank you.  
6 All right. So then --

7 MR. EISENBERG: Excuse me, Your Honor.

8 THE COURT: Yes.

9 MR. EISENBERG: This is Herb Eisenberg for  
10 Ms. Bennett.

11 THE COURT: Yes.

12 MR. EISENBERG: There is an issue that I'd  
13 like to raise. I don't know if this is the  
14 appropriate time. But yesterday evening, we  
15 received a letter from defendants telling us that  
16 plaintiff's deposition, which was scheduled for next  
17 week, is going to be put off, and also telling us  
18 that our depositions of the four defendants, which  
19 are presently scheduled for dates in April and early  
20 May, are also going to be put off.

21 This morning, we wrote to defendants  
22 stating, we can't force you to take plaintiff's  
23 deposition, but we have no intention to put off the  
24 depositions of the four named defendants that are  
25 presently scheduled. Schedules have been made to

1 accommodate those dates.

2 It is imperative that we move this case  
3 forward. The discovery cutoff is coming up fast  
4 upon us, and we don't feel there's any legitimate  
5 rationale for defendants to tell us we can't be  
6 taking the depositions that have been noticed since  
7 October and early December. We are ready to go. We  
8 would like to take those depositions. We'd like to  
9 move this case forward.

10 And if I might add, this is a similar  
11 pattern to what happened in the Trooper 1 case, and  
12 it is concerning to us. We don't want to get mired  
13 in motion practice and letters going back and forth  
14 about the opportunity to take depositions were --  
15 which were rightfully noticed and which we are  
16 willing to proceed with.

17 THE COURT: Okay. Well, I think I have  
18 made very clear my aversion to chaos, and so I have  
19 nothing in writing from anybody about this. If this  
20 just came up last night and the parties have only  
21 just exchanged letters, then you have not met and  
22 conferred about this issue.

23 So I appreciate you raising it,  
24 Mr. Eisenberg, but with all due respect, the parties  
25 need to work through that issue themselves first.

1 And we're going to be setting another date for a  
2 conference in the case. If the parties haven't  
3 worked it out by then, then we will raise it.

4 But I am not going to do issues on the fly  
5 that came up last night. That is not an efficient  
6 or a productive way for us to be dealing with  
7 issues. That's the very reason why I require you to  
8 file letters with me well in advance of our  
9 conferences so that we have an orderly way of  
10 dealing with issues.

11 MR. EISENBERG: Your Honor, I --

12 THE COURT: So I appreciate you raising it,  
13 but I am not going to rule on that issue today.

14 MR. EISENBERG: I certainly understand the  
15 aversion to address issues on the fly, and we  
16 similarly feel it would have been appropriate for  
17 this to come before the Court, certainly, prior to  
18 this, now, presentation.

19 Our first deposition, plaintiff's  
20 deposition, is scheduled for March 27th. That's now  
21 been put off. The following deposition is scheduled  
22 for April 11th, and that's Ms. DeRosa.

23 I understand we can meet and confer about  
24 this, but this just landed on our desks yesterday  
25 evening, and it is quite disconcerting. Hotel

1 reservations have been made, schedules have been  
2 made, travel plans have been made, all in  
3 anticipation of this going forward.

4 As a matter of fact, last Monday --  
5 actually, this Monday -- forgive me -- we were told  
6 we're going to go forward with these depositions, so  
7 they were confirmed. The opportunity to cancel  
8 plans is much more difficult when it is on such  
9 short notice.

10 THE COURT: All right. I understand your  
11 frustration.

12 Is there anything that any of the  
13 defendants' counsel want to briefly, briefly say on  
14 this issue, mindful that I am not ruling on it  
15 today?

16 MS. GLAVIN: Yes, Your Honor.

17 THE COURT: Go ahead, Ms. Glavin.

18 MS. GLAVIN: Yes. Yes, Your Honor. Rita  
19 Glavin, on behalf of former Governor Cuomo.

20 All I want to do is make a record and  
21 appreciate exactly what you just said about not  
22 ruling on this.

23 I think, in our March 15th status letter to  
24 the Court, we made clear that there were many, many  
25 documents that Ms. Bennett had improperly redacted.

1 On Monday night, Ms. Bennett produced 12,000 pages  
2 of documents to the parties that removed those  
3 redactions. The redactions in just -- you know, we  
4 only were able to start looking at this sometime on  
5 Tuesday, but in the sliver that we saw, there are,  
6 you know, at least 1,000 new messages, we think,  
7 just by back-of-the-envelope math that have now been  
8 unredacted in conversations that were previously  
9 produced.

10 As Your Honor might imagine, in  
11 preparing -- a lot of time has been spent preparing  
12 for Mr. Bennett's deposition. And what happened is  
13 that plaintiff, after we've repeatedly raised, over  
14 and over again in meet and confers and e-mails,  
15 issues with respect to the redactions that we  
16 believed were unresponsive information and relevant  
17 information kept coming back to us and saying it was  
18 not responsive.

19 We began providing examples. Provided  
20 examples of a 12-page text exchange between  
21 Ms. Bennett and a political operative by the name of  
22 Erica Vladimer, where there were numerous  
23 redactions, and that conversation took place during  
24 the Attorney General's investigation. It discussed  
25 Ms. Bennett's harassment allegations. It discussed

1 the AG investigation. It discussed Ms. Bennett's  
2 deposition. And within 24 hours, then they produced  
3 an unredacted version of the 12-page exchange, and  
4 there were highly relevant texts that had been  
5 improperly redacted.

6 We had a meet and confer. Following the  
7 meet and confer, we sent this letter to the Court.  
8 And what plaintiff did on Monday night was reproduce  
9 her entire production of the thousands of text  
10 messages. And it has put us in a position -- it  
11 just put us in a very difficult position because we  
12 spent weeks reviewing the 12,000 pages we had. Now,  
13 they've all been unredacted, and we have to review  
14 those.

15 In addition, you know, we detailed -- what  
16 we sent last night was a six-page, single-space  
17 letter that went through the issues that we have had  
18 with the productions after they had represented to  
19 the Court and to us that they were complete,  
20 including missing information on the -- on  
21 Ms. Bennett's cell phone, e-mail accounts that we  
22 have seen that we needed to understand whether  
23 they've been searched. There are redactions to  
24 Ms. Bennett's medical records and with her -- with  
25 respect to her prescription records. We've asked to

1 get those. We still don't have them. And so all --  
2 because of this, we were forced to have to put this  
3 off because we can't prepare. And this also  
4 impacts -- this also impacts the preparation of our  
5 own clients' depositions.

6 In addition, what I expect we will be  
7 doing -- and we have already raised this with  
8 plaintiff's counsel -- is there are many, many pages  
9 of text messages that counsel has omitted, just  
10 simply did not produce. One example that I saw last  
11 night deals with Ms. Bennett communicating with one  
12 of her closest friends. And she regularly  
13 communicated with this woman about the governor,  
14 about her job, about what was happening.

15 There are some 40 pages of text messages  
16 missing from her communications with that friend  
17 between May 15th and May 18th of 2020. Those dates  
18 are critical because there are six paragraphs in  
19 Ms. Bennett's complaint devoted to her interactions  
20 with Governor Cuomo on May 15th. And we have  
21 repeatedly been told that these omissions are not  
22 responsive.

23 Because of what we have seen in redactions  
24 that we were told were because they were not  
25 responsive and then turned out that they were, we

1 expect to file a motion before Your Honor to do an  
2 in-camera review of some of these because of our  
3 concerns.

4 But I just wanted to make the record that  
5 the issue of this being put off -- we had all been  
6 planning to go forward. We had the videographer,  
7 you know, court reporter scheduled, all of us. I  
8 have moved around other obligations to make myself  
9 available for this, but we're unable to do it.

10 And at the same time, we need the  
11 documents, particularly as it goes to comments about  
12 my client, what he said, what he did on certain  
13 days. I need that to prep Andrew Cuomo. And so I,  
14 you know, took plaintiffs at their word when they  
15 told the Court that this was complete, they produced  
16 everything that was responsive. It's not.

17 And it's certainly -- I'm unhappy on a  
18 bunch of levels. And it's not gamesmanship on our  
19 part. I have a pretty full schedule with other  
20 professional obligations, and this has thrown that  
21 into whack. It has also thrown in -- days I plan to  
22 prep with my client into whack.

23 So I just want Your Honor to know that, you  
24 know, this is not -- we're not doing gamesmanship.  
25 And I don't think comparing anything happening in



1 the Trooper 1 case to this case -- it's apples and  
2 oranges. These are two different cases, entirely  
3 different sets of allegations, different witnesses,  
4 different third parties. So I want to make a record  
5 on that.

6 And I think -- you know, we have until  
7 June 30th to get this done. We have made clear to  
8 plaintiff's counsel, our goal is to get it done by  
9 then, but we're going to have to readjust  
10 depositions because of this production. And I  
11 defer because I think some of my co-counsel may want  
12 to be heard on this as well.

13 THE COURT: Okay. Thank you, Ms. Glavin.

14 MR. DELIKAT: Yeah. Yes, Your Honor. It's  
15 Mr. Delikat. I'd like to briefly be heard also, if  
16 that's okay.

17 THE COURT: Yes, go ahead. Briefly.

18 MR. DELIKAT: Yeah. So --

19 THE COURT: This is --

20 MR. DELIKAT: Yeah. In a letter to the  
21 Court last week sent by Ms. Trzaskoma, I believe,  
22 there was discussed, albeit in a short form, issues  
23 with respect to the production of medical and  
24 therapist records.

25 THE COURT: Yeah, I assumed we would get to

1 that in this call.

2 MR. DELIKAT: Right. And so I just want to  
3 give you one example of the issues that relate to  
4 that.

5 As you know, there are claims for extensive  
6 emotional distress and pain and suffering in this  
7 case. It's not a garden-variety emotional-distress  
8 case, and, therefore, that gives the defendants the  
9 right to have access to the plaintiff's medical  
10 records and therapy records, as well as to do an  
11 examination of her by, you know, an expert forensic  
12 psychiatrist.

13 One of the most important issues is  
14 Ms. Bennett was seeing a Cynthia Haupt, who was her  
15 therapist, and she was seeing Dr. Haupt at the time.  
16 Almost all of the allegations in this case with  
17 respect to harassment were things that Ms. Mogul  
18 said or did during the same period of time.

19 We were provided with Cynthia Haupt's  
20 records, 41 pages that were almost totally  
21 illegible. We asked the other side at the time to  
22 have Ms. Haupt dictate those notes or provide us  
23 with legible copies, given the significance and the  
24 importance of this particular period in time when  
25 Ms. Bennett was regularly seeing Ms. Haupt for

1 therapy and talking about her own mental state at  
2 the time of the underlying allegations of the  
3 complaint.

4 We were told -- at the time, the first  
5 response was, there's no obligation under the  
6 Federal Rules for us to do anything other than turn  
7 over completely illegible notes. That's your  
8 particular problem. And that's all they were going  
9 to do.

10 We met and conferred with the plaintiff's  
11 counsel and said, look, this doesn't make sense.  
12 We're going to have to, now, serve a third-party  
13 deposition notice on Ms. Haupt and have her just  
14 come in and read her notes first, and then go from  
15 there with respect to that.

16 They then came around to a position that if  
17 we paid for Ms. Haupt -- her time at \$220 an hour --  
18 to transcribe those notes in a legible fashion, they  
19 would turn those over. We agreed to do that. This  
20 was last week. We agreed to do that, and we said we  
21 absolutely needed to have them by today. When we  
22 followed up with plaintiff's counsel this week, they  
23 told us they've been unable to reach Ms. Haupt.

24 In addition to the illegibility of the  
25 notes, there were six pages of the 41 pages that

1 were cut off in the original scan that were provided  
2 to us. This is the kind of critical information  
3 that we need in order to question Ms. Bennett and  
4 prepare our witnesses for this, and prepare our  
5 forensic psychiatrists for this with respect to the  
6 deposition. And just an example of things that are  
7 coming up in our ongoing disputes with respect to  
8 deficiencies that are causing us not to be ready and  
9 to ask specifically that the entire schedule be  
10 rolled forward, most importantly, that it definitely  
11 be completed by June 30th. But that we maintain the  
12 order of the witnesses that we agreed to based upon  
13 representations that the productions had been made  
14 complete by plaintiff, which they made long before  
15 we received all of these late productions this week,  
16 and still haven't received any transcription of Dr.  
17 Haupt's notes.

18 And one other thing, just on the medical  
19 record side, we've asked for copies of her  
20 prescription medications, which she was taking  
21 numerous prescription medications at the time that  
22 all of these underlying events occurred, and we've  
23 been essentially stonewalled with respect to that.

24 We said she could easily -- the first  
25 response to that was, it's not within her custody

1 and control. Well, all she needed to do was to go  
2 to the pharmacy where she got these prescriptions  
3 and get copies of those, or if she has an online  
4 app, as most people do these days, you know, for  
5 their medication, all of those prescription records  
6 would be readily available on an online app for her  
7 prescriptions.

8           These are the kinds of critical records --  
9 we're not talking about little deficiencies. These  
10 are major deficiencies that prevent us from  
11 sufficiently preparing for her deposition and  
12 preparing our clients to be able to respond to --

13           THE COURT: Great. That's fine,  
14 Mr. Delikat, but why didn't you put in a letter by  
15 the deadline that I set for you to raise all this?

16           You're throwing a bunch of things at me  
17 that nobody has explained --

18           MR. DELIKAT: Because I -- Your Honor --

19           THE COURT: I am not going to rule on  
20 medical records if you haven't raised it with me.

21           MR. DELIKAT: Your Honor, we appreciate  
22 that, and we understand that. We're just making a  
23 record on this because this all happened this week.

24           So the issue was raised as to the  
25 deficiency in medical records. These specific

1 issues, we thought were being worked out. We  
2 thought we would have legible copies of Dr. Haupt's  
3 notes because we agreed to pay her \$220 an hour to  
4 transcribe them. And all we're told this week,  
5 without any further update, is, we've been unable to  
6 reach her and no prescription record.

7 So this is all happening in real time. I  
8 appreciate, and we respect, obviously, your order  
9 with respect to that, but there's some exigency here  
10 and emergency as to what's going on, that we  
11 couldn't do it last week because they told us they  
12 would give us this stuff and they haven't.

13 THE COURT: All right.

14 Anything else that any of the defendants'  
15 counsel wants to just raise briefly with respect to  
16 scheduling of depositions, mindful, for the fourth  
17 time, I am not ruling on scheduling today.

18 MR. HAMID: Your Honor --

19 MR. MORVILLO: Yes, Your Honor.

20 THE COURT: Mr. Hamid and then  
21 Mr. Morvillo.

22 MR. MORVILLO: Okay.

23 MR. HAMID: I'm sorry, Greg.

24 Just very, very quickly, Your Honor, I just  
25 wanted to underscore a point that my co-defense

1 counsel have raised, which is, it is all of our  
2 intention to try to work on this, to get it done  
3 within the June 30th deadline. No one's happy about  
4 the schedule being upset.

5 And so I just wanted to underscore the  
6 point: This is not gamesmanship or an attempt to  
7 delay. We want to work it out, figure out a  
8 schedule that works for everyone, consistent with  
9 the order that was agreed, and still finishing in  
10 time. That's all I wanted to say.

11 THE COURT: Thank you.

12 Mr. Morvillo?

13 MR. MORVILLO: Thank you, Your Honor.

14 I wanted to point out that Ms. DeRosa is  
15 the first defendant who will be deposed in this case  
16 on the present schedule. And we agreed to be first  
17 defendant out, understanding that we would go after  
18 Ms. Bennett. And we made that agreement based on  
19 plaintiff's representation that they were finished  
20 producing documents. And as Ms. Trzaskoma's letter  
21 to the Court demonstrates, they're nowhere near  
22 finished producing documents.

23 And they have been hiding the ball on us  
24 for months now because there are videos that were  
25 redacted. And when we pressed the issue, they

1       unredacted them. But they told us that those  
2       redactions were not responsive. That was wrong.  
3       Those redactions, many of them, were highly relevant  
4       to this case.

5               Then with the text messages that -- we  
6       received 12,000 unredacted text messages this week.  
7       After we go forward, then we receive text messages  
8       from them. And the same thing: We were told, these  
9       are not responsive. And yet, many of them are  
10      highly relevant to this.

11             It is unfair to ask us to continue along  
12      this schedule when plaintiffs have been playing  
13      games with the discovery, when they haven't met  
14      their burden, when they misrepresented the fact that  
15      they went forward. And so this particularly impacts  
16      Ms. DeRosa because she's April 11th as of right now.

17             And so we still don't have all of their  
18      production. We're still missing documents. And I  
19      don't see how we can be preparing for Ms. Bennett,  
20      reviewing their documents that are very, very late  
21      in the production and still trying to prepare  
22      Ms. DeRosa, when we don't have all of their  
23      information.

24             There may be conversations about Ms. DeRosa  
25      that are in their documents that we need to see, but



1 they haven't produced them because they're claiming  
2 nonresponsive over certain things that we look at  
3 them, we see massive responsiveness.

4 So we are very concerned about this, and  
5 that's all I will say. Thank you, Your Honor.

6 THE COURT: Thank you.

7 Mr. Eisenberg --

8 MR. EISENBERG: Thank you, Your Honor.

9 THE COURT: -- there's a lot to respond to  
10 there. It's not necessary because, again, I am not  
11 ruling on this. But if there are any points that  
12 you very, very briefly want to resolve -- because I  
13 do want to get to the issues that actually were  
14 raised in the parties' letters.

15 MR. EISENBERG: Thank you, Your Honor. A  
16 couple of things.

17 One, unless defendants intend to tailor  
18 their testimony at depositions, plaintiff's videos  
19 of herself, her medical records, the notes of her  
20 therapist, her pharmacy records, none of that has  
21 any role in our depositions of defendants.

22 Defendants' depositions should go forward.  
23 It is nothing that we have withheld that should  
24 alter anything that they say. As long as they  
25 answer truthfully and from their memory and

1 experience, there is nothing that they seek from us  
2 that will inform them.

3 That being said, we dispute a lot of what  
4 has been said. For example, Dr. Haupt's medical  
5 records has been with defendants for months, at  
6 least two months, and we're hearing about this now  
7 on the eve of her deposition. We need to move this  
8 case forward. I fear that defendants aren't  
9 interested in doing so.

10 They want to blame us. They can blame us  
11 and go ahead and do that. We have responses to  
12 everything that has been said. We don't want to  
13 curtail our depositions of defendants.

14 THE COURT: All right. Thank you. Okay.

15 So then, Ms. Glavin, initially you had  
16 raised the issue of the sealing of the videos. Is  
17 that now resolved?

18 It sounds like the videos were de-redacted,  
19 or whatever you want to say, unsealed, and you now  
20 have the full videos. Is there anything remaining  
21 as to the videos?

22 MS. GLAVIN: Yeah. The only thing I just  
23 wanted to raise, Your Honor, is plaintiff's counsel  
24 had filed a letter with the Court on Wednesday of  
25 this week --

1 THE COURT: Yes.

2 MS. GLAVIN: And I just -- they have now  
3 agreed to de-designate confidentiality designations  
4 on the videos, but I do think it's important to make  
5 a record about what happened here.

6 We had met and conferred about that  
7 confidentiality designation on the videos. And at  
8 that time that we met and conferred -- that was on  
9 February 22nd -- we were talking only about the  
10 redacted videos that Ms. Bennett provided, and we  
11 said we did not think the designations were  
12 appropriate.

13 We were told, in no uncertain terms, by  
14 plaintiff's counsel throughout that meet and confer,  
15 absolutely not, would they not ever agree that they  
16 shouldn't be marked confidential. We were told  
17 repeatedly to go to Your Honor if we wanted to  
18 challenge it, that they were quite comfortable  
19 Your Honor would agree with them, and to go to the  
20 Court.

21 So, as a result, we spent a lot of time and  
22 resources writing our letter to the Court on  
23 March 15th about why it should be de-designated.  
24 And we then got an e-mail from Ms. Katz on Tuesday  
25 or Wednesday of this week doing a complete 180,

1 saying, yeah, we'll no longer make them  
2 confidential, and will you revoke your letter?

3 And it was upsetting to us because of the  
4 amount of time that we spent on a letter. You know,  
5 we keep hearing about, we're wasting taxpayer  
6 dollars. To make us go through that exercise -- and  
7 I said to Ms. Katz in an e-mail, like, we want to  
8 raise the issue of cost that we had to go through  
9 this exercise. And then write a letter to the Court  
10 saying, yeah, we've decided not to do this, after  
11 they made us write the letter.

12 So we're very frustrated, and we think it's  
13 appropriate that we should get costs for having to  
14 go through that exercise and spend our time and  
15 effort writing that letter to the Court.

16 On the issue of the videos, yes, they have  
17 now agreed, as they should have back on  
18 February 22nd, when they told us and made us go to  
19 Your Honor and made Your Honor read the letter, and  
20 then that it said, no, sorry.

21 So I think I -- very frustrated about that,  
22 and I just want the Court to know about it. And I  
23 think you should consider addressing that with  
24 plaintiff's counsel, why they made us write this  
25 letter.

1 THE COURT: All right. Ms. Bennett's  
2 counsel, who wants to respond to Ms. Glavin on the  
3 videos?

4 MS. GREEN: Hi, Your Honor. Rachel Green  
5 on behalf of Ms. Bennett.

6 It is plaintiff's position that there is no  
7 longer a dispute as to these videos. I'll respond  
8 only very briefly to avoid embroiling the Court  
9 further in this issue.

10 But following the February 26th hearing and  
11 defendants' repeated requests to see the unredacted  
12 videos in the interest of proceeding with discovery,  
13 we did produce all seven videos without redactions  
14 to defendants. Defendants, following that, never  
15 raised their designation objections, and plaintiff  
16 believed that the designation issue was no longer a  
17 live dispute. And so we were surprised to see the  
18 filing on Friday, Docket 215, limiting his  
19 de-designation request to the redacted videos.

20 And so, in light of all the live discovery  
21 disputes, and, again, in the interest of not unduly  
22 burdening the Court, we did agree to de-designate  
23 the redacted videos, other than the ten seconds of  
24 that one identified video. And so, again, we  
25 believe this is no longer a dispute, and that we

1 object vehemently to Defendant Cuomo's pursuit of  
2 fees for this.

3 And that is our position on the matter.

4 THE COURT: All right. Thank you.

5 I'm going to deny the request for costs at  
6 this time. When we get to the end of fact  
7 discovery, we'll have, I'm sure, a lot of issues  
8 about -- I hope that we don't have issues about  
9 spoliation, but to the extent that there are  
10 sanctions, costs, all that, we'll deal with it at  
11 the end of fact discovery.

12 So the request for costs with respect to  
13 the videos is denied without prejudice.

14 Next issue raised with respect to  
15 Ms. Bennett's production is the relevance and  
16 privacy redactions, but based on some things I heard  
17 a little while ago, it sounds like there were some  
18 additional productions by Ms. Bennett earlier this  
19 week, so I am not sure if this is still a live  
20 issue.

21 Ms. Glavin?

22 MS. GLAVIN: Yes, Your Honor. A couple of  
23 things on that.

24 One is, following our letter -- the  
25 reproduction happened on Monday night. We are still

1 going through that. We still have seen some  
2 redactions in there, but given the freshness of the  
3 production, I am not in a position to catalog them.  
4 And I think there are still redactions that exist in  
5 her medical records. And Mr. Delikat, Mogul's  
6 counsel, may be in a better position to raise that.

7 The issue with respect to -- I mean, there  
8 are omitted pages in the text messages. I think  
9 that, to us, also falls into the redaction category,  
10 but I think we will be raising that with the Court.  
11 And it will impact -- it will certainly impact the  
12 deposition schedule depending on what we get from  
13 them.

14 But there are, again -- I mean, one that's  
15 just sticking in my craw is the 40 pages of missing  
16 text messages from Ms. Bennett's production between  
17 May 15, 2020 and May 18, 2020 with her good friend,  
18 William McEnaney (phonetic), who she, on an almost  
19 daily basis, is discussing the governor, her mental  
20 health, working in the chamber, et cetera. And  
21 given the importance of the May 15th date and the  
22 six paragraphs in her complaint dealing with  
23 May 15th, we think that those omissions were  
24 improper. And we keep getting told blanketly that  
25 any pages they didn't produce, you know, were

1 because they were not responsive.

2 We are questioning that based on what we  
3 have been told already was not responsive, such as  
4 redactions to the videos, redactions to other text  
5 messages that we now see had highly relevant  
6 information, which is why I think we're going to  
7 have to bring it to the Court to do in camera, you  
8 know, and have Your Honor look at it, which I regret  
9 having to do.

10 And then on that issue, there's one thing I  
11 wanted to raise because they're saying that our  
12 clients' depositions shouldn't be rescheduled  
13 because of documents that are not produced because  
14 they're going to "tailor their testimony." I do  
15 want to raise something with Your Honor on this  
16 point, which I think is unique.

17 With respect to my client, the former  
18 governor, during this period of time -- I mean, he  
19 does not have, and he did not have an e-mail  
20 account, and he doesn't have access to all the  
21 materials from the Executive Chamber. And so a lot  
22 of us are being able to put together, because of the  
23 thousands of things that were going on with him in,  
24 you know, 2019 and 2020 and 2021, when Ms. Bennett  
25 was in the Chamber, and then when she made her



1     allegations, is we have to piece together dates and  
2     times, and it's not Governor Cuomo tailoring his  
3     recollection. There's core materials that we've  
4     been getting in discovery that go and actually help  
5     trigger his memory: Oh, that did happen on this  
6     date. Yes, something like that was discussed, I  
7     can't remember, et cetera.

8             So the plaintiff's production is very, very  
9     important, you know, for his preparation, not to  
10    tailor it. I mean, he's already testified before  
11    the AG about Ms. Bennett, but it's certainly in  
12    terms of a chronology, and it also puts us in a  
13    position to ask the Executive Chamber to give us  
14    certain e-mails, you know, that might deal with what  
15    the governor was doing, you know, at times  
16    Ms. Bennett is having text communication saying  
17    what's going on in the chamber.

18            So it impacts that, and it impacts how we  
19    are able to prepare him, you know, given, I think,  
20    the uniqueness of the hundreds of things going on at  
21    that time, particularly as it relates to a core time  
22    period in this, which is the early part of 2020.

23            So I just wanted Your Honor to appreciate  
24    that because it's a unique situation for me with a  
25    client, that there was a lot going on, and he does

1 not have, you know, e-mails and all of the  
2 information he would have at his fingertips when he  
3 was sitting in that job.

4 THE COURT: Okay. So I don't need to rule  
5 on anything with respect to the relevance and  
6 privacy redactions as of today.

7 MS. GLAVIN: Yes, so long as we have a  
8 representation from plaintiff's counsel that there  
9 are no redactions anymore based on the privacy and  
10 relevance.

11 THE COURT: All right.

12 Ms. Green, do you or one of your colleagues  
13 want to respond?

14 MS. GREEN: Happy to, Your Honor. This is  
15 Rachel Green.

16 So I understand that there's one document  
17 that was identified in last night's letter -- I have  
18 not yet gotten a chance to review it -- that perhaps  
19 was inadvertently continuing to contain redactions.  
20 I will take a look at it.

21 But other than that one identified  
22 document, it is, indeed, plaintiff's representation  
23 that there are no additional redactions, other than  
24 as stated in our filing, of the SSN of our client.

25 THE COURT: Sorry. I lost what you said.

1 Social Security number, that's what you meant?

2 MS. GREEN: Yes. Yes. Sorry, Your Honor.  
3 Yes, Social Security number. And with that, it is  
4 our position that there is no further dispute on the  
5 issues raised in defendant's filing on Friday.

6 THE COURT: Oh, so --

7 MS. GLAVIN: But I just want to -- Your  
8 Honor?

9 THE COURT: Just let me clarify what  
10 Ms. Green said, and then I'll let you respond in a  
11 second.

12 So what you're saying is that, aside from  
13 the one document addressed in a letter that the  
14 defendants sent you last night, which you'll look  
15 into, the only redactions in what Ms. Bennett  
16 produced this week are of her Social Security  
17 number.

18 MS. GREEN: Yes, that is correct.

19 THE COURT: All right.

20 Ms. Glavin?

21 MS. GLAVIN: Judge, I just want to be very  
22 clear, make sure that this is clear, and for Your  
23 Honor to weigh in on this, that they should not --  
24 plaintiff's counsel cannot be making redactions  
25 based on relevance or privacy.

1 THE COURT: I mean, there is a  
2 confidentiality order in place.

3 MS. GLAVIN: Exactly.

4 THE COURT: There's a protective order in  
5 place in this case, Ms. Green. So why do we even  
6 need to redact Ms. Bennett's Social Security number  
7 at this point?

8 MS. GREEN: Respectfully, Your Honor, the  
9 reason for doing that is because defendants have,  
10 unfortunately, already accidentally filed something  
11 unsealed that was supposed to be filed under seal,  
12 and so we are greatly concerned at especially the  
13 potential impact of even an accidental filing in the  
14 future if plaintiff's Social Security number is  
15 revealed. And we don't see any reason for them to  
16 have it. And if they need it for some reason, we  
17 can provide it separately, but we would prefer to  
18 keep those redacted to maintain her privacy.

19 THE COURT: All right.

20 I mean, Ms. Glavin, can you tell from  
21 the -- I realize you just got the documents on  
22 Monday, but are you able to tell from the context  
23 that, yes, it really only is the Social Security  
24 number that's being redacted?

25 And if there's some that you have doubts

1 about, that you think it's more than just a Social  
2 Security number, then in the first instance, you can  
3 raise it with Ms. Green.

4 But what she's representing is the only  
5 thing that they've redacted is the Social Security  
6 number, which I understand there's a protective  
7 order in place in this case, but I'm trying not to  
8 have another round of having unredacted documents  
9 produced.

10 So if that's the representation, but if you  
11 have a concern about something where you think it's  
12 more than just Social Security number, can we just  
13 table that for you to raise it with Ms. Green in the  
14 first instance? And then if I need to look at it,  
15 then I'll look at it.

16 MS. GLAVIN: Yes.

17 Your Honor, let's put the Social Security  
18 number to the side here because I think that's, sort  
19 of, less of an issue here. What we would like from  
20 Your Honor is to instruct plaintiff's counsel that  
21 they cannot be redacting for relevance or privacy,  
22 given the protective order in the case, which is  
23 what they had done in the production of, you know,  
24 thousands of pages of documents, that they cannot be  
25 doing that.

1           And then once we have that from Your Honor,  
2           there should not be an issue. I mean, I can tell  
3           you from the sliver we've looked at, there are still  
4           some redactions, but I think if Your Honor makes  
5           that clear today, it makes any meet and confer much  
6           easier if we have a problem.

7           THE COURT: All right. Well, no one has  
8           convinced me that anybody should be redacting -- any  
9           party in this case -- not addressing nonparties --  
10          but no one, in what I've heard today or to date in  
11          this case, has convinced me that there needs to be  
12          redactions for relevance or privacy because there's  
13          a protective order in this case.

14          Based on Ms. Bennett's counsel  
15          representation, that the only thing that she has  
16          redacted is the Social Security number, as a  
17          pragmatic matter, I'm not going to require her to do  
18          another round of unredactions. But if any of the  
19          defendants have a concern about a document that  
20          Ms. Bennett has produced that has redactions, and  
21          they think it's more than the Social Security  
22          number, then that would not be in compliance with my  
23          ruling. All right?

24          MS. GLAVIN: Thank you, Your Honor.

25          THE COURT: All right.

1           The last issue that I think was raised in  
2           the letter, and then I'll give you a chance to  
3           clarify, was the phone extraction.

4           Based on your letter, Ms. Glavin, it  
5           sounded like the parties were still discussing that  
6           issue, but is there anything you want to elaborate  
7           on?

8           MS. GLAVIN: Yes, Your Honor.

9           I believe we're at an impasse with respect  
10          to the phone extraction. And I think that  
11          Mr. Morvillo's colleague, Sarah Sulkowski --

12          Sarah, I am going to mispronounce your  
13          name, and I apologize.

14          MS. SULKOWSKI: It's okay. Sulkowski.  
15          Don't worry about it.

16          THE COURT: Hold on. All right.

17          Ms. Sulkowski, do you want to raise -- oh,  
18          go ahead.

19          MS. GLAVIN: Yeah, but just one issue is,  
20          Your Honor, we believe that Ms. Bennett's phone  
21          needs to be fully imaged. It's clear to us that it  
22          was not. And, you know, one example is that the --  
23          you know, these thousands of pages of text messages  
24          don't have timestamps. We have a date stamp, but  
25          they don't have timestamps. And that information is

1 critical to us, particularly as she's talking about  
2 events on certain days in real time, as to what she  
3 said to whom, when, about what.

4 And we have asked for the timestamps and  
5 that they are certainly going to be on her phone,  
6 and it would be in the metadata, and we don't have  
7 that, and so we believe that the phone needs to be  
8 imaged. But I will let my co-counsel, Ms. DeRosa's  
9 counsel, also speak to this.

10 THE COURT: All right.

11 Ms. Sulkowski?

12 MS. SULKOWSKI: Thank you, Your Honor.  
13 Sarah Sulkowski, for Melissa DeRosa.

14 So I think the concept of metadata is  
15 familiar. Standard electronic discovery  
16 instructions and the instructions that we included  
17 with our document requests in this case provide for  
18 the processing of metadata; for example, by  
19 requiring that families of documents be linked  
20 within an electronic production. We expressly asked  
21 for that.

22 The result would be, of course, that once  
23 the production is loaded into a database, like  
24 Relativity or a similar database, documents that are  
25 embedded in or attached to, for example, an e-mail



1 or a text message would be related as child  
2 documents to that parent message and would be able  
3 to be viewed as such. They would also likely appear  
4 sequentially within the production as it was  
5 reviewed in the software.

6 Metadata also includes things like  
7 timestamps, as Ms. Glavin mentioned, on text  
8 messages. And as we all know from our own text  
9 messaging, our phones keep track of the time each  
10 message was sent, and standard e-discovery software  
11 preserves and provides that information, which,  
12 again, we expressly requested here.

13 So none of that was done here. There are  
14 numerous text and e-mail messages that clearly  
15 contained or attached photographs, documents, or  
16 other materials where the attachments are missing  
17 and not linked in any way to the messages. In fact,  
18 it's unclear whether the attachments were provided  
19 to us at all. And if they were, it's impossible to  
20 determine which ones went with which messages. Nor  
21 do we have timestamps for most of the messages that  
22 were produced. And, as Ms. Glavin said, that's key  
23 information here where contemporaneous messages were  
24 being sent during the events at issue.

25 To take just one example, CB-00004958 is a

1 page of a text chain between plaintiff and Lindsey  
2 Boylan. It's marked confidential, so I'm not going  
3 to read it, but it shows that an image or images  
4 were sent in December 2020 by Boylan to Bennett in  
5 the context of a conversation about Governor Cuomo.  
6 The embedded image, or images, aren't linked to the  
7 document. It's entirely unclear whether we received  
8 them, or, if so, where they appear in these dozens  
9 of thousands of pages that plaintiff has produced.  
10 A standard phone extraction tool would have linked  
11 these files as a family, and that needs to be done  
12 here.

13 Plaintiff never objected to our electronic  
14 discovery instructions in this case, much less  
15 notified us that they wouldn't be providing key  
16 metadata. And so, as we've received each deficient  
17 production, defendants have gone back to plaintiff's  
18 counsel and requested the metadata, only to be told  
19 that it wouldn't be produced because plaintiff has  
20 given us what she has.

21 The software that plaintiff used on her  
22 phone is called iMazing. The limitations of this  
23 software are well known. There is a publication  
24 last year by The Sedona Conference, which is a legal  
25 nonprofit, which points out that iMazing "may not

1 extract all information, such as images or photos  
2 that are sent via text message. The collection and  
3 subsequent production may be incomplete if  
4 non-extracted information is responsive to the  
5 document request. It is important to understand the  
6 limitations of collection tools and discuss these  
7 with opposing counsel so an agreement can be  
8 reached."

9 That was never done. If plaintiff had  
10 notified us she was going to be using this kind of  
11 software, we would never have agreed, and we would  
12 have sought Court intervention at that time. When  
13 we realized it was occurring, we tried to work with  
14 plaintiff to get the necessary information on a  
15 rolling basis, but we've gotten flat refusals. And,  
16 in fact, we've had to demand even basic information,  
17 like the dates on which certain messages and  
18 recordings were sent.

19 This just isn't a workable way to conduct  
20 discovery in a high-stakes federal litigation. The  
21 information is not available from another source.  
22 It is uniquely within plaintiff's possession,  
23 custody and control, and it's plainly responsive and  
24 highly relevant.

25 And so we need plaintiff's phone to be

1 properly imaged and the results provided to us  
2 immediately, and then we'll need to review those  
3 results before depositions can commence, and so this  
4 is an issue of urgency.

5 Thank you, Your Honor.

6 THE COURT: How many problematic text  
7 messages have you identified?

8 MS. SULKOWSKI: Certainly hundreds.

9 THE COURT: Hundreds?

10 MS. SULKOWSKI: Yeah.

11 THE COURT: And from a particular time  
12 period or, kind of, across the board?

13 MS. SULKOWSKI: It's across the board,  
14 Your Honor. There are very few embedded images or  
15 documents that are accessible within the sequential  
16 production, if any, frankly.

17 THE COURT: And from what Ms. Boylan has  
18 produced to date, have you been able to identify,  
19 you know, for example, a message that Ms. Bennett  
20 sent to Ms. Boylan that appeared to have  
21 attachments, and the copy in Ms. Bennett's  
22 production doesn't have the attachments, but in  
23 Ms. Boylan's production it does?

24 MS. SULKOWSKI: We haven't had the chance  
25 to cross-reference this production that we just

1 received, so I will say I don't know. But given the  
2 volume that Ms. Boylan has produced to date, it's  
3 exceedingly unlikely that that's going to solve the  
4 problem.

5 THE COURT: Okay. Thank you.

6 Ms. Green, you or one of your colleagues  
7 want to respond on the phone?

8 MS. GREEN: Yes. Thank you, Your Honor.  
9 This is Rachel Green.

10 THE COURT: Yep.

11 MS. GREEN: A number of issues to respond  
12 to, but just to try to keep it as brief as possible,  
13 this issue about iMazing and e-discovery, defendants  
14 are raising that for the first time today. We did  
15 not know until this moment that they had an issue  
16 with our use of iMazing, and they have had at least  
17 some of plaintiff's text messages with iMazing  
18 located on the documents since December 2023. So  
19 this is news to us. We do not believe that this is  
20 a ripe issue for the Court's attention today.

21 As far as the other issues that were raised  
22 in the filing from defendants on phone extraction,  
23 we did use iMazing to download the phone. As we  
24 have repeated across multiple meet and confers and  
25 e-mails, the information that we have provided to

1       them, the metadata that we have, is the information  
2       that we also have available to us.

3               To the extent that families are not linked  
4       or attachments are not included, we do not have  
5       them. I do not know enough about technology to be  
6       able to explain why we do not have them, but I can  
7       represent that if an attachment is not included or  
8       if metadata is not included, it is because it is not  
9       available to us. And I want to note, if a  
10      responsive attachment -- obviously, if the  
11      attachment is not responsive, we would not have  
12      provided it.

13              But we have repeatedly told defendants  
14      this, and it's my understanding that their inclusion  
15      of this complaint in their letter to the Court is --  
16      and I understand their perspective, that they are  
17      frustrated with the answer, which is that there is  
18      not anything else to provide.

19              And also, I want to note, if we are going  
20      to be keeping a thorough record today, just that  
21      with respect to several of the key conversations in  
22      particular, plaintiff had collected screenshots of  
23      those conversations in the course of gathering  
24      documents responsive to the NY AG production years  
25      ago. And in the course of responding to the much

1 broader requests from all four defendants in this  
2 case, obviously, plaintiff conducted a second  
3 thorough review of all documents and texts in her  
4 custody, possession or control. And in doing so, we  
5 have produced multiple formats of some of those same  
6 conversations: PDFs, Excel spreadsheets, text  
7 formats. And some of those have timestamps. Some  
8 of them do not.

9 Again, I am not a tech person able to  
10 explain to you why some are and are not available,  
11 but we have provided what is available to us.

12 THE COURT: Does Ms. Bennett still have the  
13 phone that she used during 2019, 2020?

14 MS. GREEN: I believe so. She's had two  
15 phones, and we have imaged both of them on iMazing,  
16 and I believe she has both still, yes.

17 THE COURT: Okay. And the image that you  
18 have on iMazing, that's an image of the whole phone,  
19 or only portions?

20 MS. GREEN: Yes. That is what I have been  
21 informed, yes.

22 THE COURT: Okay. All right.

23 Well, I don't know that I have a full  
24 record to rule on. It sounds like the defendants  
25 are asking me to order the imaging of Ms. Bennett's

1 phone. I would like additional submissions from the  
2 parties on this issue.

3 So we'll talk about scheduling in a minute,  
4 but we'll set up a schedule for the defendants to  
5 submit a letter laying out why I should order the  
6 imaging of Ms. Bennett's phone and a chance for  
7 Ms. Bennett to respond. And then we'll rule on it  
8 at the next conference, which is going to be pretty  
9 soon, given -- yes?

10 MS. SULKOWSKI: Your Honor, it's Sarah  
11 Sulkowski. If I might just correct the record  
12 briefly --

13 THE COURT: Yes, go ahead.

14 MS. SULKOWSKI: I corresponded with  
15 Ms. Green on March 15th several times about iMazing  
16 specifically, and so the representation that this is  
17 a new issue is simply false. Thank you.

18 THE COURT: I understand, but it's pretty  
19 new to me because you told me in your letter that  
20 you were still meeting and conferring, which is  
21 fine --

22 MS. SULKOWSKI: Understood.

23 THE COURT: -- but I am not going to order  
24 the imaging of Ms. Bennett's phone without a more  
25 fulsome record than I have before me now.



1 MS. SULKOWSKI: Certainly. I was not  
2 suggesting it's not new to Your Honor. Thank you.

3 THE COURT: Yeah. Yeah. Okay.

4 MS. GREEN: And, Your Honor, this --

5 THE COURT: Yes?

6 MS. GREEN: This is Rachel Green. I just  
7 had one other point, if I may raise --

8 THE COURT: Yes.

9 MS. GREEN: Back with respect to the  
10 redactions and the removal of redactions, I  
11 understand the Court's position on this, and I just  
12 want the record to be clear that your position on  
13 relevancy and privacy redactions applies to the  
14 Cuomo and other defendants' productions as well.

15 And I want to note again that they did this  
16 repeatedly, and they are thousands of pages, in  
17 particular, of Defendant Cuomo's production that  
18 they have produced with redactions based on  
19 relevancy, particularly from his BlackBerry. I'm  
20 talking about entire pages where it is entirely  
21 redacted and on presumably no basis. And we are --  
22 I know -- I can sense Rita is about to speak, and  
23 I -- we are meeting and conferring --

24 MS. GLAVIN: No. No, Rachel. No. No,  
25 Ms. Green.

1 THE COURT: No. If you go back and look at  
2 the transcript, I said that the ruling applied to  
3 all parties, so ...

4 MS. GREEN: Thank you, Your Honor. That is  
5 all.

6 MS. GLAVIN: Yep. Yes, Your Honor.

7 And just so that I don't jump out of my  
8 seat, but I, kind of, am -- the redactions that were  
9 done to Governor Cuomo's BlackBerry, we understood  
10 they were done due to responsiveness, not relevancy  
11 and privacy. And I have represented repeatedly to  
12 plaintiff's counsel, because the exercise, at least  
13 with respect to one of the BlackBerrys, was done  
14 three years ago with another law firm, we're going  
15 to go back and rereview those, and they're going to  
16 get what they're entitled to. And I agree that  
17 relevancy redactions should not be happening, and  
18 we're going to turn it over if there's any redaction  
19 that's inappropriate.

20 THE COURT: Great. Thank you. All right.

21 Any other issues in the letters that the  
22 parties submitted in advance of this conference that  
23 I've overlooked that we need to discuss today before  
24 we turn to schedules?

25 MS. TRZASKOMA: It's Theresa Trzaskoma.

1           Just briefly, not raised in our letter, but  
2           raised in connection with the de-designation of the  
3           videos referenced in the letter that we submitted at  
4           ECF 173, as Your Honor will recall, we filed a  
5           redacted version of that letter on the public docket  
6           because it contained certain content from those  
7           videos that had been designated as confidential, so  
8           I just want to confirm that we are clear to file an  
9           unredacted version of that letter on the public  
10          docket.

11           THE COURT: That was ECF 173, you said?

12           MS. TRZASKOMA: Correct. I think it -- so  
13           the original filing was under seal -- you know,  
14           partially under seal.

15           THE COURT: All right.

16           Ms. Green, any objection?

17           MS. GREEN: I don't have it in front of me,  
18           and plaintiff does not object to the extent that  
19           there is no mention of the ten seconds that both  
20           parties agree should remain confidential, and to the  
21           extent that it does not mention, quote, or otherwise  
22           provide access to those ten seconds, then plaintiff  
23           does not object.

24           THE COURT: Do you know, Ms. Trzaskoma, if  
25           it --

1 MS. TRZASKOMA: Yeah. The letter does not.  
2 And we have agreed that those ten seconds of a  
3 single video would remain redacted.

4 THE COURT: Okay. But does the letter  
5 reference those ten seconds or not?

6 MS. TRZASKOMA: No. No.

7 THE COURT: Okay. All right. Then the  
8 unredacted version of ECF number 173 can be filed.  
9 Thank you.

10 Anything else before we turn to schedules?

11 All right. Just before we actually look at  
12 dates, I want to understand -- at a minimum, I'm  
13 going to need to decide whether to order the imaging  
14 of Ms. Bennett's phone.

15 Ms. Glavin, do you anticipate that  
16 there's -- you made several references to in-camera  
17 documents you were going to want me to review in  
18 camera. Do you know yet specifically those issues,  
19 or is that an ongoing, evolving subject?

20 MS. GLAVIN: If plaintiff's counsel is  
21 persisting in their position that all of the pages  
22 they removed from text exchanges are not responsive,  
23 then yes. And, I mean, off the top of my head, I've  
24 now seen three or four of them, but we're still  
25 making our way through the 12,000 pages that came

1 through Monday, so it will take a bit.

2 But just as a practical matter, I'm sure we  
3 could tee up, you know, a dozen right now. And it  
4 may be that if we tee that up and the Court looks at  
5 this in camera, that might influence plaintiff's  
6 thinking with respect to other omitted pages.

7 THE COURT: All right. So there is still  
8 an issue with nonresponsive portions of  
9 Ms. Bennett's production being withheld.

10 MS. GLAVIN: Yes, Your Honor.

11 THE COURT: Okay. And then the issue with  
12 the imaging of her phone.

13 Anything else in camera? Any other  
14 in-camera topics at this point? Hoping no.

15 Okay. So the next date that I could have a  
16 conference with you is the morning of April 2nd.  
17 That doesn't give you a whole lot of time to get me  
18 letters and anything I would need to review in  
19 camera, but I can give you that if you want and you  
20 can do your best to give me what you need. Or we  
21 can look at the week after, the week of April 8th.  
22 I do have some openings then instead.

23 MR. MORVILLO: Your Honor, this is Greg  
24 Morvillo.

25 THE COURT: Yes?

1 MR. MORVILLO: I have a question.

2 Will the April 2nd -- if that's going to be  
3 the date, will we be discussing the deposition  
4 schedule at that point? Because that's after  
5 Ms. Bennett's deposition that has already been  
6 scheduled and about nine days before Ms. DeRosa is  
7 scheduled to go, or are we having a different  
8 conference for that?

9 THE COURT: No. If you guys haven't worked  
10 out the issue by then, then I would want to talk  
11 about it on April 2nd, but it sounds like the  
12 defendants just sent their letter last night. So it  
13 sounds like you guys have some work to do about  
14 talking about schedules before I need to get  
15 involved.

16 MR. MORVILLO: Okay. We have had a meet  
17 and confer about this issue, and we have been told  
18 in no uncertain terms then in an e-mail we received  
19 this morning from Ms. Schnell, that plaintiffs will  
20 not consent to moving the defendants' depositions.  
21 And I think someone said it on this call today, so I  
22 do think that needs to be teed up as fast as  
23 possible.

24 THE COURT: Well, as fast as possible that  
25 I can give you is April 2nd, so ...

1 MR. MORVILLO: Well, if that's the date,  
2 then that's the date. I just wanted to make sure  
3 that was on the schedule and that we were going to  
4 be dealing with that issue at that time. Thank you.

5 THE COURT: If you guys haven't -- I mean,  
6 I would strongly encourage you -- there are a lot of  
7 document issues, you know, more on the defendants'  
8 side than the plaintiff's side, but there's some  
9 issues on both sides. I would strongly encourage  
10 you to use the time next week to see if you can come  
11 to an agreement on rolling the schedule forward.  
12 But if you can't, then we'll discuss it on April  
13 2nd. And if I have to micromanage your calendars, I  
14 will, but you won't like it. That's all I can say.

15 MR. MORVILLO: Thank you, Your Honor. I  
16 appreciate that.

17 THE COURT: All right. So --

18 MS. GREEN: Your --

19 THE COURT: Go ahead.

20 MS. GREEN: Your Honor, Rachel Green.

21 THE COURT: Yes?

22 MS. GREEN: Just briefly, with respect to  
23 the in-camera documents portion of defendants'  
24 disputes, I know a few moments ago, defendants'  
25 counsel said, you know, that there are a number of

1 issues with regards to the omission of certain  
2 pages. They identified a couple examples for us, I  
3 believe, earlier this week. We're looking at them.  
4 And I just want to present to Your Honor that we are  
5 willing to meet and confer with defendants about  
6 this before, again, raising those specific examples  
7 to Your Honor. In-camera review may not be  
8 required. We're happy to speak with defendants  
9 about the examples they've provided.

10 THE COURT: Great. I would love not to  
11 have to review anything in camera at this point in  
12 time. I'm sure I will at some point, but if I don't  
13 have to, then that would be great.

14 So, as I see it, the agenda for April 2nd  
15 would be to the extent that the parties haven't come  
16 to an agreement on deposition scheduling, the  
17 question of the imaging of Ms. Bennett's phone and  
18 any withholding or redactions for nonresponsiveness.  
19 Those seem to me to be the three issues that we  
20 would be checking in about.

21 Are there any other topics at this point  
22 that the parties foresee, as we sit here, we would  
23 need to address?

24 Okay. Great.

25 So could you then get me letters by 6 p.m.



1 on March 28th in anticipation of a conference at --  
2 well, assuming it works for everybody, we could do  
3 10 a.m. on April 2nd.

4 Ms. Schnell or Ms. Green, you or any of  
5 your colleagues have a conflict on April 2nd at 10  
6 a.m.?

7 MS. SCHNELL: That's fine. Fine with me,  
8 Your Honor.

9 THE COURT: Okay.

10 Ms. Glavin?

11 MS. GLAVIN: That's fine, Your Honor, with  
12 respect to my team.

13 THE COURT: Okay.

14 Mr. Morvillo?

15 MR. MORVILLO: April 2nd at 10 a.m.,  
16 Your Honor? That's fine.

17 THE COURT: Yeah. By phone.

18 Mr. Delikat?

19 MR. DELIKAT: That's fine, Your Honor.  
20 Thank you.

21 THE COURT: All right.

22 Mr. Hamid?

23 MS. ROSENBERG: This is Leah Rosenberg at  
24 Debevoise, Your Honor. That's fine for us as well.

25 THE COURT: Okay. Great.

1 All right. Very good. So we'll look for  
2 letters from you by March 28th at 6 p.m. I will  
3 give you five pages since the issue with respect to  
4 the imaging of Ms. Bennett's phone may take a little  
5 bit more space, as well as any issues about  
6 deposition scheduling and redaction for  
7 nonresponsiveness.

8 As I see it, those are the three issues,  
9 but if there are others that are ripe by that point  
10 in time that you need to raise, that's why I'm  
11 giving you five pages.

12 Ms. Schnell or Ms. Green, anybody else on  
13 Ms. Bennett's side, anything that you would like to  
14 raise today?

15 MS. GREEN: Nothing further, Your Honor.

16 THE COURT: Great.

17 On the defendants' side, anything else?

18 MS. GLAVIN: No, Your Honor.

19 THE COURT: All right. Great.

20 Thank you very much. We will ask you to  
21 order a transcript of today's proceedings as well.  
22 I don't think I need it before we talk again on  
23 April 2nd, but I appreciate all the time. And have  
24 a good weekend, everyone. Thank you.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Bennett v. Cuomo; Docket #22CV7846 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: March 26, 2024